IN THE

INTERNATIONAL COURT OF JUSTICE

March, 1970

CASE NO. 1

UNITED STATES,

Applicant

v.

AMAZONIA,

Respondent

MEMORIAL FOR RESPONDENT

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JURISDICTION

The United States and Amazonia, upon the consent of both parties, invoke the jurisdiction of the Court pursuant to Article 36 (1) of the Statute of the International Court of Justice.

QUESTIONS PRESENTED

I.

Whether the 1905 Treaty between the United States and Amazonia was void ab initio.

II.

Whether the terms of the 1905 Treaty bind Amazonia in the instant case.

III.

Whether the United States may espouse the claim of UPC, a Canadian corporation.

IV.

Whether the finding by the Amazonia High Court that the 1923 grant was void as in excess of powers must be upheld.

V.

Whether there was confiscation without compensation in violation of international law.

VI.

Whether the 1936 Amazonian constitutional amendment precludes UPC from relying on diplomatic intervention by the United States in aid of its claim to subsoil resources.

VII.

Whether the coercive economic reprisals by the United States against Amazonia were in violation of the OAS Charter.

SUMMARY OF ARGUMENT

The 1905 Treaty was void ab initio due to the force used by the United States in imposing it upon Amazonia. Even if the Treaty is held to be valid, it does not bind Amazonia in the instant case because 1) the circumstances under which it was signed have substantially changed, and 2) in any event it does not apply to the subsoil rights allegedly owned by UPC.

International law does not permit the United States to espouse the claim of UPC, a Canadian corporation, because of a possible usurpation of Canada's right to do so.

The findings by the Amazonia High Court must be upheld because there has been no violation of international law. Furthermore, the United States cannot claim that there has been confiscation without compensation, because 1) there was compensation for the physical assets, 2) there is no duty on the part of the Board to award compensation for future exploitation rights, and 3) the declaration of a set-off of debts is not invalid under international law.

Finally, the United States is internationally responsible to Amazonia because of a violation of Article 16 of the OAS Charter.

ARGUMENT

I. The 1905 Treaty was void ab initio.

No unanimity exists among international lawyers as to whether pacific blockades are admissible according to principles of International Law.[1] Several writers of authority have denied that such blockades are valid;[2] where their validity was recognized, the usual justification was that they are necessary as a means of preventing or ending war. As stated by Oppenheim,

> Pacific blockade is a measure of such serious consequences that . . . it can be justified only after the failure of negotiation to settle the questions in dispute. . . .
>
> . . . [T]he value of pacific blockade as a means of non-hostile settlement was doubted by some writers. Others maintained . . . that every measure which is suitable and calculated to prevent the outbreak of war must be welcomed.[3]

In the instant case there is no question but that the blockade was used to force the enactment of an inequitable international agreement, rather than to prevent war; the possibility of a war between small Amazonia and powerful United States over a concession agreement was too remote to be used as justification for the blockade. Therefore, the 1905

Treaty was invalid from its inception because of the threat of force employed by the United States, and is therefore not binding on Amazonia. Consent under duress is no consent at all; and it is an accepted principle of international law that agreements are based on the consent of the parties thereto.[4] Consequently, there exists no agreement the breach of which the United States can point to as being in violation of international law.[5]

II. The terms of the 1905 Treaty do not bind Amazonia in the instant case.

A. The doctrine of rebus sic stantibus permits Amazonia to renounce any obligation she may have had under the 1905 Treaty.

Amazonia contends that the 1905 Treaty was void ab initio and that she is therefore under no obligation to treat her "commitments to United States nationals or enterprises as inviolable." (R-1) However, for purposes of this portion of the argument, the validity of the Treaty will be assumed.

1. The former practice of imposing agreements by the use of military force has been discredited by international law.

In 1905, it was the accepted practice of powerful, industrialized nations to resort to armed force and military in-

tervention in order to impose international agreements which were favorable to them. The bombardment and subsequent blockade by Great Britain, Italy, and Germany of certain Venezuelan cities in 1902 is an example which is well remembered by all Latin American countries. Similarly, the instant case shows that the United States, as well, has on occasion resorted to force to protect American foreign investment.

No repudiation, arbitrary or otherwise, of a concession agreement justifies the use of force in respect to the imposition of a subsequent Treaty; the blockade was far too serious a reaction to the relatively minor offense committed by Amazonia. Amazonia maintains that if she did actually enter into the Treaty, it was done only because she had no choice but to comply due to her military and economic inferiority and the prevailing practice of stronger states. However, it is the contention of Amazonia that in any case the fundamental change in the methods used by the more powerful nations to impose their international agreements has resulted in the availability to Amazonia of the doctrine of rebus sic stantibus. Under this doctrine, a treaty is intended by the parties to be binding only as long as there is no vital change in the circumstances which, at the time of the conclu-

sion of the treaty, all the parties had assumed. Such change in methods is evidenced, for instance, by the Charter of the United Nations, a document binding on both Amazonia and the United States:

> All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
>
> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.[6]

Contrary to the accepted practice in 1905, therefore, armed force and military intervention may no longer be used by the stronger states to impose their will upon the weaker states. To do so would be a violation of international law.

2. Rebus sic stantibus is an accepted principle of international law.

The doctrine of rebus sic stantibus is a widely-accepted principle of international law. Indeed, as was pointed out by one legal scholar,[7] the doctrine has even been accepted by the United States, not once but many times.[8] For instance, the doctrine is accepted in the Restatement of the Foreign Relations Law of the United States.[9] Russia (1870), Austria-Hungary (1908), Persia (1927), and Germany (1936,

1939) have also invoked the doctrine, in situations where all that had changed was "the relative power position and the greater freedom of action of the parties onerously affected by these treaties."[10]

It can therefore be seen that the doctrine of rebus sic stantibus is a customary rule of international law. Furthermore, the contention of Amazonia is that, since it is not the present practice of the United States to use armed force to impose inequitable treaties upon the weaker countries, Amazonia is therefore no longer bound by a treaty which was entered into at a time when such practice was the only reason for her agreeing to it.

B. Even if the 1905 Treaty is valid as to other interests, it does not apply to the subsoil rights allegedly owned by UPC.

Even if it is determined by this Court that the 1905 Treaty is to be enforced, Amazonia submits that there has been no violation of that Treaty, the terms of which purport to bind her with respect to all interests of United States nationals and enterprises. (R-1) In the instant case, the Treaty is not applicable to the subsoil rights in question; under the Amazonian Constitution, which will be examined in

more detail later (Section VI, infra), when aliens are granted the right to exploit subsoil resources they are considered Amazonians in respect of such rights. Therefore, since the subsoil in question belonged to what was in effect an Amazonian citizen, the 1905 Treaty, which protects only United States nationals and enterprises, does not apply.

On this same point, the Treaty on its face does not permit of an allegation of violation in the instant case. In the present case, the United States is representing a company which is incorporated in Canada and is therefore a citizen of that country. Thus the terms of the Treaty are not violated; failure to "accord the most constant protection" to all Canadian nationals would, therefore, if alleged, not be a violation of international law in the instant dispute. UPC is a corporation existing under and by virtue of the laws of Canada, and is therefore not protected by the Treaty. Since a corporation is a creature of the law, it has the nationality of the state under whose laws it was created. Justification for this rule has been given as follows:

> This rule seems the most reasonable since the laws imposed by that country must be observed in the creation of the corporation. If these laws are infringed, the corporation becomes a nullity; it has no personality, and consequently will have no nationality.[11]

Therefore, even if the Treaty is held valid and binding, it has no application to UPC in the instant case.

III. The United States may not espouse the claim of UPC, a Canadian corporation.

A. To allow a state to represent its citizens who are stockholders in foreign corporations results in a usurpation of the rights of other sovereign states.

This Court had the opportunity to adopt the "control" test for corporate nationality in Barcelona Traction, Light and Power Company,[12] but refused to do so. In that case, one main issue was whether Belgium could represent the interests of a corporation before this Court when that corporation was a citizen of Canada and the stockholders were Belgians. The Court refused to deal directly with this issue as a preliminary objection preferring, instead, to rephrase the question and join it to the merits. Subsequently, on February 5, 1970, this Court held that Belgium had no standing to exercise her diplomatic protection in favor of the Belgian stockholders of the Canadian company.[13] The Court considered that the adoption of the theory of diplomatic protection of shareholders as such would open the door to competing claims on the part of different States, which could create an atmosphere of

insecurity in international economic relations. Since the company's national state was able to act, the Court was not of the opinion that jus standi was conferred on the Belgian government. Similarly, in the present case, if the United States is allowed to espouse the claim of UPC, the rights of Canada, a sovereign sister state, will be usurped.

The United States has also rejected the "control" test in treaties, before international claims commissions, and in its diplomatic correspondence.[14]

The only conclusion to be drawn is that the situation resolves itself into one approximating that which was present in the Nottebohm case,[15] where it was held that a country may not, under the rules of international law, espouse the claim of one who was not a legitimate citizen of that country.

B. An allegation by Amazonia that the United States lacks standing to represent UPC goes to the merits of the case, and is not a preliminary objection.

In the Barcelona Traction case,[16] this Court joined to the merits Spain's preliminary objection that Belgium lacked capacity to represent the stockholders. For our purposes, the importance of this point is that the Court did take up, on the merits, the question of Belgium's right to

represent her nationals. In the instant case, therefore, Amazonia may contest the right of the United States to represent her nationals, stockholders in a foreign corporation, even though preliminary objections were waived. As was stated by Rosenne,

> When a State puts forward pleas of this character, its aim is to prevent adjudication in limine, and the preliminary objection procedure exists for this specific purpose. If the objection is raised at a late stage, i.e., not as a preliminary objection, the object is to put forward the jurisdictional issue as an alternative to the defence on the merits.[17]

IV. The finding by the Amazonian High Court that the 1923 grant was void as in excess of powers must be upheld.

It is respectfully submitted by Amazonia that this Court has no authority to question the finding of the Amazonian High Court that the 1923 grant was void because "in excess of administrative or legislative powers." (R-3) The decision on the validity of the grant was a determination made by the highest court in Amazonia, based on an interpretation of Amazonian law. This finding involves no violation of international law, and therefore must be upheld in this Court.

V. Under the facts stated in the record, no claim can be made that there was confiscation without compensation in violation of international law.

The applicant's note of October 3, 1969, alleged confiscation of American property in violation of "international law," and demanded "immediate and full compensation." (R-3) The right of a country to nationalize for a public purpose its natural resources is no longer debatable under customary principles of international law;[18] furthermore, the record shows that compensation was awarded to UPC by the Compensation Board. (R-3)

The abuse of a right cannot be presumed, and the onus of proof is upon the party which alleges that there has been an abuse of right.[19] As was stated in the Chorzow Factory case,[20] "Misuse cannot be presumed and it rests with the party who states that there has been such misuse to prove his statement." The applicant's objection, therefore, seems to be not with the lack of compensation but rather with the resulting amount lawfully awarded to UPC for the nationalization of its property, or perhaps with the set-off which in effect wiped out anything which might have been owed to UPC by the Amazonian government.

A. There was no duty on the part of the Board to award compensation for future exploitation rights.

While it may be conceded that there is still consid-

erable international acceptance of the doctrine of "prompt, adequate, and effective" payment for expropriations, the practice of states has shown that flexibility rather than orthodoxy is to control.[21] Even admitting for the moment the existence of the stricter doctrine, however, there is no hard and fast rule of international law which determines exactly what is included in the phrase "prompt, adequate, and effective payment." In this connection many scholars argue that in the absence of a treaty there is a right to expropriate without "full or adequate compensation."[22] In addition, the United States Supreme Court stated in Banco Nacional de Cuba v. Sabbatino [23] that traditional rules of international law which required an expropriating government to pay an alien investor "prompt, adequate, and effective compensation" were no longer supported by a consensus of sovereign states.[24]

This view is supported by the December 14, 1962, Resolution of the United Nations entitled Permanent Sovereignty Over National Resources,[25] which states that:

> Nationalization . . . shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests. . . . In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.[26]

At the time the above resolution was being considered, the United States proposed an amendment which would substitute the words "prompt, adequate, and effective" for "appropriate". This amendment was rejected and later withdrawn.[27]

The United States can cite no law to the effect that such compensation must include future exploitation rights; in fact, international law points to the opposite conclusion. In the leading arbitration case of El Truinfo Company (United States) v. Salvador,[28] one issue was whether the former owners of confiscated property had a right to be compensated for future profits. A wrongful revocation of a concession agreement was found compensable; the Board granted no relief for future profits, however, despite the fact that the 25 year exclusive concession contract under dispute still had 22 years to run. The decision was based on "accepted rules of international courts in such cases." In addition, one article summarizes

the respective positions of various countries in regard to compensation and concludes that if the nationalization was lawful, the former owners are entitled only to the value of the physical assets.[29] There is thus no rule of international law by which UPC may claim entitlement to future exploitation rights from the nationalized property.

B. It was within the competence of the Board to declare a set-off between the amount owed UPC by Amazonia and the amount owed Amazonia by UPC.

Settlements between states may validly be effected "by means of offsetting claims of one state against the claims of another."[30] Dozens of cases are reported in which set-off is recognized as valid at both national and international levels.[31] The only requirement is that the counterclaim must arise out of the same subject matter as that involved in the principal case.[32]

As concerns the set-off found by the Compensation Board, the United States' objections before this Court must be based on some rule to the effect that such action is in violation of international law. In this regard, any objections may be answered by reference to the classic S. S. Lotus[33] case, which held that restrictions upon the independence of states

cannot be presumed. There is no rule of international law prohibiting a country from setting off a debt owed it against a debt owed by it; nor does any rule of international law prohibit a country from adopting as part of its domestic law the doctrine of set-off if it so wishes. There was no discrimination between foreigners and Amazonians and thus there was no "denial of justice" as that term is used in international law.[34] "Denial of justice" in international law has been described as

> outrage, bad faith, willful neglect of duty, insufficiency of governmental action so far short of international standards that every reasonable and impartial man could readily recognize its insufficiency.[35]

Not even by straining at the very limits of credulity could such words be used to describe the instant situation.

C. <u>"Unjust enrichment" is a concept which is validly within the scope of Amazonia domestic law</u>.

Objection by the applicant might be based on an alleged lack of validity of respondent's claim to unjust enrichment. But this objection is based purely on a matter of Amazonian domestic law, rather than international law, and therefore the Compensation Board finding must be held binding. There is no rule of international law which prohibits the use of unjust

enrichment in the computation of damages. In this situation reliance must again be made on the S.S. Lotus case:[36] that which is not specifically prohibited by a rule of international law is no violation of international law.

D. The amount of compensation to be paid, and what factors that amount is to include, are not strictly regulated by international law.

Mention has been made of the fact that strict interpretation of "prompt, adequate, and effective" payment has given way to a more flexible standard.[37] One reason for the increasing acceptance of this flexibility is recognition of the fact that a doctrine which, when strictly applied in all cases, benefits only a few of the members of the international community, cannot maintain its validity in a changing world. In this connection, it must be recognized that the strict rule requiring full compensation for every nationalized right in all cases was adopted at a time when international law was being formulated by the few powerful, aggressive, industrialized nations which were active in international trade and relations. It was only natural that they should adopt a rule which would protect the heavy investments they had made in the smaller countries, and by means of which they had attained their powerful positions in the international community.

The present situation is quite different; not only is the sovereignty of rights respected and the right of non-intervention approved, but also the methods used to enforce international agreements have completely changed.[38] Consequently, the argument is often made that new states (i.e., those whose emergence into the international community occurred after most of the rules of international law had been formulated) should not be bound by rules the strict application of which will benefit only a few states.

The main thrust of this theory has been directed against the traditional rule of compensation. The import of the current trend is that the new states should not be bound by onerous compensation rules the strict observance of which would almost surely mean ecomonic ruin for the underdeveloped countries, which are desperately trying to improve their positions in the community of nations. As one scholar has stated:

> The history of the establishment and consolidation of empires overseas by some of the members of the old international community and of the acquisition therein of vast economic interests by their nationals teems with instances of a total disregard of all ethical considerations. . . . Rights and interests acquired and consolidated during periods of such abuse cannot for obvious reasons carry with them in the minds of the victims of that abuse anything like the sanctity the holders of those

> rights and interests may and do attach to them. To the extent to which the law of responsibility of states for injuries to aliens favors such rights and interests, it protects an unjustified status quo. . . .[39]

Widespread dissatisfaction with the traditional rules of compensation has led to the adoption by the weaker states of what may be termed a rule of <u>regional</u> international law, which, although recognizing the need to "preserve the minimum conditions which are regarded as necessary for the continuance of international trade and commerce,"[40] nevertheless would adopt a compromise between the rights of the stronger nations and the needs of the weaker ones, a compromise which attempts to accomplish a fair solution to a practically insoluble problem of international relations.[41] Thus, although the right to appropriate compensation in the event of nationalization is recognized, the nationalizing state may retain the right to determine the amount of that compensation; guided always by the rules of justice and fair play but recognizing also that, in many cases, full compensation for every nationalized right may be absolutely impossible if that state is to survive and improve itself.[42] This theory of compromise may be justified as follows:

> The juxtapositions of the expressions

> 'the principles of justice' and 'international law' in paragraph 1 of Article 1 of the Charter of the United Nations setting out the purposes of the Organization does suggest a recognition of the paramount importance of justice in relation to law, so that, in the event of a conflict between the two, the principles of justice must override the specific rule of international law.[43]

While Amazonia recognizes the right of UPC to be appropriately compensated for its nationalized property, she nevertheless reserves the right to determine, after due and careful consideration of all legal, equitable, and economic factors, the amount of that compensation.

VI. The 1936 Amendment to the Amazonian Constitution precludes UPC from relying on diplomatic intervention by the United States in aid of its claim to subsoil resources.

A. The Calvo Doctrine is a recognized principle of Latin American international law.

The case of United States of America (North American Dredging Co. of Texas) v. United Mexican States[44] states that there exists no generally accepted rule of international law condemning the Calvo Clause and denying to an individual the right to relinquish the protection of the government to which he owes allegiance. In this connection the inclusion of Calvo-type clauses in the constitutions of Latin American countries has occurred not only in Amazonia, but also in Peru,[45] Bolivia,[46]

Honduras,[47] and Nicaragua,[48] to name just a few. The widespread Latin American practice of inclusion of such clauses in their constitutions therefore establishes a regionally-recognized custom,[49] which validates the Calvo Doctrine under regional international law. The fact that the Doctrine is inoperative in and unrecognized by the United States, therefore, is irrelevant; UPC chose to do business in Amazonia, where the Doctrine is recognized as valid, and therefore must be held bound by the terms of the Amazonian Constitutional Amendment.

B. The reason usually given as justification for the rejection of the Calvo Doctrine has no applicability in the instant case.

It has been said that the reason the Calvo Doctrine has not generally been accepted as a principle of international law by other than Latin American nations is that arbitration has in this century practically replaced intervention and duress as a means of implementing foreign policy, and that therefore there is no need for the Doctrine.[50] A contrario sensu, when there is intervention, then there is a need for the Doctrine, adoption of which is in many respects the only possible way in which a weaker state may protect its natural

resources against a mightier state.[51] In the instant case, since there actually was intervention, not only in 1905 but also indirectly by the October 3, 1969, retaliatory actions of the United States in violation of both the United Nations[52] and O.A.S.[53] Charters, a fortiori the Amazonian Constitutional Amendment of 1936 must be recognized as valid.

VII. The United States violated the O.A.S. Charter by its coercive economic reprisals against Amazonia.

Article 16 of the O.A.S. Charter imposes a solemn obligation on all member states:

> No state may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another state and obtain from it advantages of any kind.[54]

The United States' actions (R-4) amounted to economic reprisals in violation of its treaty duty. These acts resulted in a 40 per cent drop in Amazonia's import and foreign exchange needs (R-1) and were disproportionate to any acts on the part of Amazonia. The actions of the United States were clearly coercive economic measures calculated to "force the sovereign will" of Amazonia within the meaning of Article 16, and were thus violations of the O.A.S. Charter.

CONCLUSION

For the foregoing reasons, Amazonia respectfully requests this Court to find 1) that the United States is internationally responsible to Amazonia with respect to its actions, 2) that UPC be required to pay to Amazonia the sum of $530 million for unjust enrichment, and 3) that Amazonia owes no further compensation to UPC.

CERTIFICATE AS TO LENGTH

I certify, as Captain of the International Moot Court team, that by my count, this memorial contains fewer than 4,500 words. Signatures of the four remaining team members have not been affixed to this certificate because as of the mailing of this brief our local elimination rounds will not have been terminated.

This procedure has been sanctioned by James A. R. Nafziger, Executive Secretary, Association of Student International Law Societies.

Robert F. Bouchard

FOOTNOTES

1. II Lauterpacht, Oppenheim's International Law 148-49 (7th ed. 1952).

2. E.g. Hautefeville, Des Droits et des Devoirs de Nations Neutres (2d ed. 1958) (cited in Lauterpacht, supra note 1).

3. Lauterpacht, supra note 1, at 149 (emphasis added).

4. See generally I Schwarzenberger, A Manual of International Law 136-40 (4th ed. 1960).

5. I Oppenheim, International Law 519 (1905).

6. U. N. Charter, art. 2, paras. 3, 4. See also id. art. 33.

7. Lissitzyn, Treaties and Changed Circumstances (Rebus Sic Stantibus), 61 Am. J. Int'l L. 895 (1967).

8. Id. at 903, 908-09.

9. Restatement (Second) of Foreign Relations § 153 (1965). See also Harvard Research Reports in International Law, art. 28, 29 Am. J. Int'l L. Supp. 653 (1935).

10. G. Schwarzenberger, A Manual of International Law 158 (4th ed. 1960).

11. In re Mexico Plantagen, German-Mexican Claims Commission, Decision No. 27, January, 1930, Annual Digest Int'l L. Cases 265, 266 (1931-32).

12. Int'l Court of Justice, Communiqué No. 70/2, 5 Feb. 1970.

13. Id.

14. Treaty of Friendship and Commerce between the United States and Ireland, art. 11, para. 3, T.I.A.S. 2155

(1950); Treaty of Friendship, Commerce, and Navigation, United States and the Italian Republic, T.I.A.S. 1965 (1948); United States General Claims Comm'n, United States and Mexico (1923); V Hackworth, Digest of International Law 831 (1943).

15. (1955) I.C.J. Reports 4.

16. Supra note 12.

17. 1 Rosenne, The Law and Practice of the International Court 442-43 (1965).

18. 8 Whiteman, Digest of International Law 1020, 1037 (1967).

19. B. Wortley, Expropriation in Public International Law 103 (1959).

20. (1926) P.C.I.J. Series A, No. 7, at p. 30.

21. Rafat, Compensation for Expropriated Property in Recent International Law, 14 Villa. L. Rev. 199 (1969).

22. Wortley cites Cavaglieri, Sir John Fisher Williams, Charles de Visscher, Rubin, Freeman, Friedman, and Delson. B. Wortley, Expropriation in Public International Law 35 (1959).

23. 376 U.S. 398 (1964).

24. E.g., Societe Biro Patente A.G. v. Laferest, Tribunal Civil de la Siene, March 12, 1952 (19 Law Digest 338) (France); United States (Agency of Canadian Car & Foundry Co.) v. Germany, Mixed Claims Comm'n, United States and Germany, 1939, as reported in V Hackworth, International Law 833 (1943).

25. Yearbook of the United Nations 504, Resolution No. 1803 (XVII) (1962).

26. Id.

27. Id.

28. 1902 U. S. Foreign Rel. R. 859, as reported in W. Bishop, International Law 672 (2d ed. 1962).

29. Supra note 21, at 226. See, e.g., Law of Expropriation, art. 41 (1935) (France).

30. I Whiteman, Damages in International Law 248 (1937).

31. Id. at 248-74.

32. Id. at 257 n. 632, citing many cases.

33. (1927) P.C.I.J. Series A, No. 10.

34. See generally The Montevideo Convention of the Rights and Duties of States, art. 9 (1933), discussed in Irrizarry y Puente, Concept of "Denial of Justice" in Latin America, 43 Mich. L. Rev. 383, 389, 390 (1944).

35. Mexico (Garcia & Garza v. United States), General Claims Comm'n (1926), Opinions of the Comm'rs 163 (1927), 4 U. N. Rep. Int'l Arb. Awards 119, 21 Am. J. Int'l L. 581 (1927).

36. (1927) P.C.I.J. Series A, No. 10.

37. Section V-A, supra.

38. See text at notes 1-5, supra.

39. Guha-Roy, Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law?, 55 Am. J. Int'l L. 863, 864-65 (1961).

40. Id. at 866.

41. Yearbook of the United Nations 504, Resolution No. 1803 (XVII) (1962).

42. See M. Mughraby, "Permanent Sovereignty over Oil Resources" 15 (1966).

43. Supra note 39 at 868.

44. United States of America (North American Dredging Co. v. Texas v. United Mexican States, United States-Mexican Claims Comm'n (1926), 4 U.N.R.I.A.A. 26.

45. Constitution of April 9, 1933, art. 31 (Peru).

46. Constitution of November 23, 1945, art. 18 (Bolivia).

47. Constitution of March 28, 1936, art. 19 (Honduras).

48. Constitution of March 22, 1939, art. 29 (Nicaragua).

49. I.C.J. Stat. art. 38, para. 1, subpara. b.

50. See Shea, The Calvo Clause 20 (1955).

51. Id. at 19.

52. U. N. Charter, art. 33.

53. O.A.S. Charter, art. 16.

54. Id.

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